



MEMORANDUM

NEW MEXICO DEPARTMENT OF GAME & FISH

March 26, 2001

TO: To All Commissioned Conservation Officers, Division of Wildlife and Public Affairs staff

FROM: Dan Brooks

SUBJECT: Nonresident Coyote Hunting

Recently, a discussion regarding a nonresident's ability to kill and possess a coyote took place at a State game Commission Meeting. After thoroughly reviewing appropriate statutes some changes in interpretation have been made. Below are the guidelines that the Department will now be following.

Nonresidents who purchase any nonresident hunting license or a nonresident non-game license can possess coyotes or other non-game animals. The possession would be allowed if the coyote was reduced to possession by predator calling or incidental to other hunting activity but not if the coyote was obtained through trapping. It is important that we provide consistent information to the public based on the laws of the state.

The law specifically states in 17-3-1 NMSA 1978:

...No nonresident shall shoot, hunt, kill, **or take, in any manner any non-game animal** or non-game bird without first paying for and having in his possession, any one of the nonresident hunting licenses listed in 17-3-13 NMSA 1978, required by law for the year in which the shooting, hunting or taking is done.

There are several things to note in reviewing this section. The section is specific as to the acts of shooting, hunting, killing and taking. There is no mention of possession, as is commonly found throughout other portions Chapter 17 NMSA 1978.

How does one take an animal and not possess it? In this case it is quite clear as we look at

17-3-2 NMSA 1978, paragraph A 12, which states:

“Non-game” entitles the license to hunt or **TAKE** any animal or bird not protected by law.

Notably, paragraph A 12, is the only paragraph, in 17-3-2 NMSA 1978, pertaining to hunting that mentions the word TAKE. Therefore it is obvious that it is intended for the non-game license to be treated differently than the other hunting license mentioned. The important reference to this comes when we look at the definition of TAKE.

In Black’s law dictionary, TAKE is defined as, to lay hold of; to gain or receive into possession; to seize; to deprive one of the use or possession of; to assume ownership. Using this definition, the word, TAKE, as used in 17-3-2 NMSA 1978, paragraph A 12 would allow the possession of non-game.

To get a complete picture of the coyote situation I believe it is important to also look at 17-5-5 NMSA 1978, paragraph B, which states:

“No nonresident shall capture, trap or possess any fur-bearing animal or skunk or coyote or attempt to do so without first procuring a nonresident trappers license.”

This taken alone seems to indicate that a nonresident must have a nonresident trapper’s license in order to possess a coyote. However, since this possession is taken in the context of capture or trap, it creates a conflict in the law.

Does it hold that the possession referred to in 17-5-5 NMSA 1978 is the possession that came about through the process of capturing or trapping only or does it apply to possession in general? Possession in 17-5-5 applies only to those animals obtained through capture or trapping, while the take (possession) as described in 17-3-2, as previously discussed, can be allowed for those coyotes taken through shooting, hunting or killing. Hence, if the possession is more general, then there appears to be a conflict in the law and we need to refer to 17-3-1 NMSA and, clearly, with the appropriate hunting or non-game license, a nonresident may hunt and take, bring into possession, coyotes and other non-game animals.